

Testimony Before
The Judiciary Committee
BILL HB-6487
Public Hearing on AN ACT CONCERNING CERTIFICATES OF MERIT
& REPEALING CONN. GEN. 52-190a (3/4/11)
by
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I will like to thank-you for this opportunity to testify before the Connecticut Judiciary Committee regarding this Bill concerning a Certificates of Merit and repealing 52-190a because I believe it's unconstitutional (??)

1. First and foremost, "Section 52-184c of the general statutes is repealing 52-190a. It is hereby submitted that Connecticut Courts are presently applying law unconstitutional; therefore, the Judiciary Committee should make corrective action to apply the new law retroactively from the Supreme Court of Connecticut decision dated February 8, 2011 in the case of Richard Bennett, Jr. v. New Milford Hospital, Inc., putting the unconstitutionality of the Good Faith Certificate back in the hands of the legislature. (*Effective from passage and applicable to actions filed "on" or "after" said date.*)"
2. The judicial remedies in seeking a wrongful death claim in the Connecticut Courts, is a right that "exists in common law" and cannot be impaired by the Connecticut legislature. The citizens pending cases before the courts' due process and equal protection rights are presently being violated under the 14th. Amendment of the United States Constitution and Connecticut Constitution Article First Sec. 1, 10, and 20 and Article Fifth (separation of powers) in seeking judicial remedies for medical malpractice claims.

PUBLIC INTEREST FACTOR

3. The Public Interest Factor, tilts towards the best interest of the public that the Act concerning Certificates of Merit Section 52-184c should be

applied retroactively to all medical malpractice pending cases before the Connecticut Superior, Appellate and Supreme Courts because of the unconstitutionality which 52-190a has caused the citizen of Connecticut. The requirements in section 52-184c of the general statutes, with regard to the pending cases, are arguably unconstitutional and shows ambiguity as to the repealing of 52-190a. While **BILL HB-6487** does attempt to address these constitutional concerns, it will not do anything to alleviate, the **"harm"** that is being done to the pending cases before the courts. If it applies only to actions filed **"on"** or **"after"** the effective date.

BALANCING OF HARM

4. In determining whether "substantial harm" will result to other interested parties, the court is required to examine the "substantiality, likelihood of occurrence and adequacy of proof" of any asserted harm to the defendant. FDIC v. Cafritz, 762 F. Supp. 1503, 1509 (D.D.C. 1991) (order potentially propelling individual into bankruptcy does not constitute substantial harm outweighing taxpayers' right to be paid). Where the potential harm to the Plaintiffs in denying the motion substantially outweighs the harm to Defendants if the motion is granted, this Court has found the "balance of harms" test to be satisfied. Stewart v. Armory Bd., 789 F. Supp. 402, 406 (D.D.C. 1992). The Government's failure to act expeditiously may tip the balance in favor of enjoining prospective Government action, since by its delay the Government demonstrates that its action is not urgently required. E.g. Topanga Press, Inc. v. Los Angeles, 989 F. 2d 1524 (9th Cir. 1993). The citizens of Connecticut continue to be harmed by Connecticut General Statute 52-190a which blames the victims of medical malpractice, and deprives the underprivileged citizens of Connecticut the right to seek a Wrongful Death Claim and/or Medical Malpractice Claim which is depended on an unconstitutional law. See **Exhibit "A"** hereto attached the Honorable Rep. Ward's open statement to the Speaker

concerning the fact that Connecticut General Statute 52-190a was unconstitutional, see pages 165, 166, 167, and 168:

"Mr. Speaker, I am not certain but I raise the question. It appears to me that this provision is probably unconstitutional under the separation of powers provisions."

Existing common law and legislative principles

5. The Court has traditionally since 1818 held the role of gatekeeper when determining which witnesses or experts were qualified to assist the court with issues beyond the ken of the average person. Further, this Court has traditionally determined which cases had merit and which cases lacked merit. It is this Court's discretion that decides when a Plaintiff has presented a prima facie case. There is no doubt that Conn. Gen. Stat. § 52-190a is currently and will continue to impact a large number of potential Plaintiffs endeavoring to bring a medical malpractice case ***"if it is not repealed."*** This fact, coupled with the fact that the act eliminates this Court's discretion to determine who is competent to offer an opinion, creates the significant interference. Conn. Gen. Stat. § 52-190a violates the Connecticut Constitution, Article V § 1, separation of powers, and it is unconstitutional.
6. It is this State's express policy preferring to bring about a trial on the merits of a dispute whenever possible and to secure for litigants their day in court. Coppola v. Coppola, 243 Conn. 657, 665 (1998); Snow v. Calise, 174 Conn. 567, 574 (1978). Rules of practice and procedure are both to facilitate business and to advance justice. They will be construed liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice. Coppola at 665. Rules are a means to justice and not an end in themselves. In re Dodson, 214 Conn. 334, 363 cert. denied 498 U.S. 896 (1990). Our practice does not favor the termination of proceedings without a determination of the merits of the controversy when

that can be brought about with due regard to necessary rules of procedure. Johnson v. Zoning Board of Appeals, 166 Conn. 102,111 (1974).

7. It is a fundamental principle that courts do not construe statutes in a linguistic vacuum. Thames Talent Ltd. v. Commission of Human Rights and Opportunities, 265 Conn. 127, 136 (2003). When construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended. Goldstar Medical Services Inc. v. Dept. of Social Services, 288 Conn. 790, 803 (2008). The court should not undertake to examine a statutory provision with blinders on regarding what the legislature intended it to mean. The law favors rational and sensible statutory construction. Connelly v. Comm. of Corrections, 258 Conn. 394,407 (2000). The unreasonableness of the result of one possible alternative interpretation in favor of another that would provide a reasonable result. *Id.* at 407.
8. The legislative intent behind Conn. Gen. Stat. § 52-190a was to have Plaintiffs consult with their experts prior to filing suit. The pre-complaint opinion was intended to avoid meritless actions. By attaching the opinion to the good faith certification, any misrepresentation, mistake, or error in the translation of the opinion would be avoided.

IN CONCLUSION

BLAMING VICTIMS TO MEDICAL MALPRACTICE

9. Legislators should "take notice" that Connecticut is the insurance capitol of the world, and that the state's insurance companies lobbyists were instrumental in the drafting and marshalling of sufficient legislators to enact Conn. Gen. Statute 52-190a, to deprive the underprivileged people of Connecticut in seeking a Wrongful Death Claim and/or Medical Malpractice Claim and in an unconstitutional manner.

10. The lobbyists who were instrumental in drafting Connecticut General Statute's 52-190a blame the victims of medical malpractice case for the said unconstitutional law. Let's consider the extremes. Connecticut General Statute's 52-190a is a tool for big insurance business and the megabanks, which is to say the rich, who flourish no matter what is going on with the economy within Connecticut. Connecticut General Statute's 52-190a does not consider the poor people who cannot afford an expert opinion. The initial fees in Connecticut for an expert opinion is between \$2,500.00 to \$5,000.00, and the total fees are about \$25,000.00 to \$40,000.00 dollars for that same expert witness on the merits which includes a deposition.
11. The Conn. Gen. Stat. 52-190a is articulated as if the poor don't exist in Connecticut. But with jobs still scarce and the bottom falling out of the Connecticut middle class, the poor are becoming an ever more significant and increasingly desperate segment of the Connecticut population.
12. Can you imagine a family of four could live on annual income of \$11,000 or less, and afford to pay for an expert opinion letter if they were faced with medical malpractice?
13. The Connecticut insurance companies' lobbyists, who were instrumental in the drafting the language of the statute and marshalling Conn. Gen. Stat. 52-190a, do not talk about the families and individuals living in poverty; while they deliberately avoid the question by Rep. Ward concerning this statute unconstitutionality.
14. Also see Attached hereto marked **Exhibit "B"** Sen. Gunther's testimony:

"But lo and behold, two years ago, when we had a hearing, I brought the fact out that the judges had ruled that that was unconstitutional. You can't do that with lawyers. You can't tell a lawyer how much he

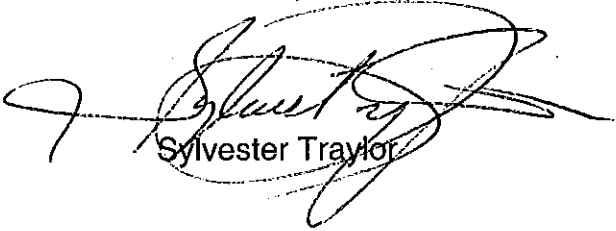
can take on a case. Even though you had a state law, he says, it's unconstitutional."

"But you can't do that in the legal profession because a judge rules it's unconstitutional."

15. Attorneys are not obligated to pay for an expert opinion letter. Therefore, should a Plaintiff failed to obtain an expert opinion, their due process and equal protection rights will be violated under the 14th. Amendment of the United States Constitution and Connecticut Constitution Article First Sec. 1, 10, and 20 and Article Fifth (separation of powers) in seeking judicial remedies for a medical malpractice claim.
16. The Connecticut poor, who have been "harmed" more than anyone else in the enactment of Conn. Gen. Stat. 52-190a, don't stand a heartbeat's chance in seeking an expert opinion letter. The state's insurance companies' lobbyists didn't even give a thought to the poor people who are victims of medical malpractice. The state's insurance companies' lobbyist's interest was on the side of the millionaires and billionaires insurance companies.
17. Nearly 44 million people were living in poverty in 2009, which were more than 14 percent of the American population and a jump more of four million from the previous year. Anyone who thinks things are much better now is delirious. More than 15 million children are poor — one of every five kids in the United States. More than a quarter of all (blacks) and a similar percentage of (Hispanics) are poor.
18. Where are they going to get the money to pay for an expert opinion letter? Welfare, which is for the poorest of the poor, does not provide legal remedies concerning Conn. Gen. Stat. 52-190a.

Wherefore, I humbly appeal to the Judiciary Committee to REPEAL: Conn. Gen. Stat. 52-190a and apply BILL HB-6487 **RETROACTIVELY** to the Supreme Court of Connecticut decision dated February 8, 2011 in the case of Richard Bennett, Jr. v. New Milford Hospital, Inc., putting the unconstitutionality of the Good Faith Certificate back in the hands of the legislature because of the Public Interest Factor, tilts towards the best interest of the public in that the Conn. Gen. Stat. 52-190a is presently in violation of the Citizens of Connecticut Due Process and Equal Protection rights under the 14th. Amendment of the United States Constitution, Connecticut Constitution Article First Sec. 1, 10, 20 and Article Fifth (separation of powers) in seeking judicial remedies for a medical malpractice claim.

Yours truly,



Sylvester Traylor

THE CONNECTICUT GENERAL ASSEMBLY

HOUSE OF REPRESENTATIVES

JUNE 8, 2005

52-190a

The House of Representatives was called to order at 12:35 o'clock p.m., Speaker James A. Amann in the Chair.

SPEAKER AMANN:

The House please come to order. Will the Members, and staff, and guests please rise and direct your attention to the dais where our Guest Chaplain Garland Higgins, Reverend Garland D. Higgins of the Bethel African Methodist Episcopal Church of Bloomfield will lead us in prayer.

REVEREND GARLAND D. HIGGINGS:

Let us pray. Eternal sovereign parent, the one who ultimately leads and guides us, may You bless the closing day of this Session.

May You provide peace and rest to the Legislators who have labored in the best interests on of the people of our state. Grant them wisdom today as they go forth to prepare for a new year. Amen.

SPEAKER AMANN:

Exhibit A¹⁵

Thank you, Mr. Speaker. Through you, an additional question. Is it correct, then, that the General Assembly can modify the code as submitted by the State Contracting Standards Board? Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Caruso.

REP. CARUSO: (126th)

Through you, Mr. Speaker, that is correct.

REP. WARD: (86th)

Thank you, Mr. Speaker.

SPEAKER AMANN:

Representative Ward. I'm sorry.

REP. WARD: (86th)

Thank you, Mr. Speaker. That is how I read it as well.

Mr. Speaker, I am not certain but I raise the question. It appears to me that this provision is probably unconstitutional under the separation of powers provisions. Many of you may realize that we have a Regulation Review Committee.

When that was created, we delegate to Executive Branch agencies the power to make regulations and then

Ex "A"

created a Regulation Review Committee. It was one of the first in the nation.

That Regulation Review Committee had the ability to reject regulations that we had delegated the authority to the Executive Branch to create. A constitutional challenge was brought to that, saying that once delegating the authority, you can't take it back, essentially.

It was upheld because our Regulation Review Committee cannot rewrite the regulation. It can reject it or it can reject it with prejudice.

That's the only basis under standard interpretation of administrative law in terms of delegation where it comes back to the authority, the Legislative Branch to delegate it, that you can act on it.

It appears to me this intends to circumvent that. We delegate to the State Contracting Standards Board, the right to create a new code. We then submit it back to a committee with instructions that we vote on it, but can change it.

It really would have been much wiser to write it in accordance with what the Supreme Court had ruled when

EX A''

our Regulation Review Committee, which is that you can reject it, you can reject it without prejudice, which means the Contracting Board can change it if it wishes and send it back.

We could have also skipped the whole process and had a legislative committee write the code. That's completely legitimate. But I think there are serious questions about the constitutionality of the procedure that's been set up here, and I think somebody should have paid attention to it.

Mr. Speaker, I am also concerned about the provisions of the Bill that are the anti-privatization provisions. To reform the state contracting process makes absolute sense and should be done.

I think it should have been a clean bill focused on contracting standards and not be used as a vehicle to forward legislation that had been sought by state collective bargaining units for a number of years.

And so under the reform of a contracting out process, somebody else's agenda comes forward. Those provisions on privatizations, we have granted our employees the right to collectively bargain those.

EXA

Common and municipal contracts you negotiate, whether or not you can privatize. An arbitrator can even give an award in binding arbitration if the union requests it, management denies it, it could be awarded.

But it's not good enough to give the right to collectively bargain this. We have to actually grant it in statute. So there isn't the give and take between union, between management and labor. There isn't the give and take to decide whether these provisions make sense. It's just granted.

We give up again, additional management rights for nothing. And I think that's a mistake. I'd like to see this Bill proceed, but I'd like to see it proceed without the privatization provisions, which according to the fiscal note have potentially significant costs.

Mr. Speaker, I would ask the Clerk to please call LCO Number 7774 and I be permitted to summarize.

SPEAKER AMANN:

Will the Clerk please call LCO Number 7774 to be designated House Amendment Schedule "A".

CLERK:

Ex "A" 12

*A Cause
For Action*

Connecticut Families
Search for Justice

Project of
Connecticut Center for Patient Safety and
Connecticut Patients' Rights Group

Exhibit "B"

A Cause For Action

Connecticut Patients' Rights and the Connecticut Center for Patient Safety deeply appreciate the courageous individuals and families who have shared their stories and relived the painful experiences that changed their world forever.

This book is dedicated to them and to those whose stories remain untold.

Our hope is that it gives voice to the suffering these people have sustained.

Our wish is that we have done justice to their sorrow.

Our purpose is to break the silence that confronted these victims of medical malpractice, and to expose the manner in which they were treated by the healthcare industry.

Ex. 11 B⁴

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- *Sadie Cole*
- *Matthew Gersz*
- *Laura Seckley*
- *Mia House*
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- *Denise Heinen*
- *Jeanne Konecny*
- *Mary Ann Piccolo*
- *Benita Toussaint*

Ex¹¹ B¹¹

"I want to see responsible parties held accountable"



Kate Govoni

My wife Kate died suddenly at age 41 after a routine allergy shot in a doctors office. Our then four-year old son was sitting next to her and screamed when she collapsed from anaphylactic shock. Our one-and-one half year old daughter was downstairs in the lobby with her nanny. No one in the 14-doctor medical practice could revive Kate, in part because there was no intravenous epinephrine available. It took three calls to 911 to get an ambulance and amazingly enough, it was only when paramedics arrived that an emergency tracheotomy was performed. By then though, it was too late.

A couple of hours later, the allergist walked me to my care and was so remorseful and emotionally drained that he offered to check with his malpractice insurer to see what he could do for me and my kids. If that wasn't a

tacit admission of liability and responsibility I don't know what is. But nothing ever became of that gesture. The result is four-plus years of litigation with no end in sight.

It seems to me that if a physician is willing to accept responsibility for a patient's death by settling a case early but can't invoke the protection of his insurance policy, the insurer can be found in breach of his contractual obligation, not to mention laws designed to protect patients and insurance customers.

What compounded the absurdity of this case was the fact that two poorly trained investigators for the state department of Public Health did little to probe the root cause of this tragedy and eventually whitewashed the matter.

I want to see the responsible parties held accountable.

Steve Govoni

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Quality Healthcare is a Right

Ex B

*We need
to know when
error happens.*

Four years ago my three-year-old daughter, Andie Mei died during a procedure to insert tubes in her ear to help with chronic ear infections. The doctors' errors were compounded by the fact that the alarm on the monitor was not being operated. In a reasonable and customary manner.

This has been an enormous tragedy for our family. We have a small Christmas tree in our living room to remind us of the bright light she brought to our lives.

Andie Mei's death is neither an exception nor an aberration. Complacency, arrogance and simple negligence claim the lives of patients every day. It is critical for health-care customers to know and understand for their own safety. The public must begin to act to protect their own interests.

Rosemary Gibson wrote a book about medical malpractice called the Wall of Silence about medical malpractice. Silence is exactly what confronted us when this disaster happened. My daughter entered surgery in the morning and was declared dead that night. No one apologized; no one admitted a mistake had happened. It took years for the Department of Public Health and the Medical Examining Board to address the problem.

When they did act, it was inadequate. We lost a child. But the physician who practiced such bad medicine was fined just \$5,000 and placed on probation. It is little wonder that CT ranks 40th in the country in getting rid of bad doctors. Only 5% of the doctors commit 50% of the errors. Yet the system is set up to protect its own. It puts the public at enormous risk.

I do not know if the anesthesiologist has committed other errors. I also do not know the history of the surgeon who did the



Andie Mei Meder

operation. He has left the state and no action has been taken against him. When serious malpractice happens, the physicians often do leave the state and set up practice elsewhere. Because these doctors are no longer a threat to a state's residents, Departments of Public Health don't act because their responsibility for the public health stops at the state line. The National Practitioners Data Bank, which can only be accessed by hospitals and Departments of Health, has a 61% error rate.

We need to know when error happens, how it is handled and in what hospitals or

surgical centers. We need to be able to choose doctors based on their malpractice history. As a society we can do this. Because the public needed to have confidence in the US airline system, the industry conceived a strict quality control method. When a plane crashes, or there is even a near miss, there is a national organization that analyzes the crash. We need to have the same system to address medical error. More people are dying unnecessarily in the hands of our healthcare system than on our roads. That is the tragedy.

— George Meder

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CT PATIENTS' RIGHTS GROUP

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Quality Healthcare is a Right

EXL

"I knew something was wrong . . . I kept asking for a doctor"



Laura Seckley with her little sister, Rebecca

**"They just want
to pretend that it
didn't happen"**

On September 5, 1997 our daughter Laura was born. Due to negligence our beautiful child will have a lifetime of kidney transplants and disability.

I knew something was wrong during the delivery. I kept asking for a doctor. But the midwife, believing she had more experience than the physician who had only had his license for three months, did not call him. The nurse knew something was wrong, too. But instead of saying something or getting me and my baby some help, she just changed the medical records to show that she notified the midwife of my daughter's tachycardia (rapid heart beat.)

A series of medical errors and judgments led to Laura's damaged kidneys, significant scarring and her projected lifelong need for kidney transplants. This has had a profound effect on my husband and me. I am very afraid to leave her; afraid that something else might happen. My husband is clinically depressed and has had a difficult time with my fear and his beautiful daughter's disability.

Our hope for Laura's future now rests on our ability to hold these people accountable in court. We resent recent moves by doctors and hospitals to limit our rights and blame us for their problems.

I have read a lot since this all happened to us. And what I don't understand is why hospitals don't try to do a better job. If you hurt someone, you need to ask yourself, what went wrong? But the hospitals and the nurses and the doctors just want to pretend that it didn't happen. It is always someone else's fault. I read the Leapfrog Group's recommendations for hospital change. I also read that nothing has been done. Why?

I want our legislature to take some kind of action; mandate that hospitals change procedures. No one there seems to be in charge.

Christie Seckley

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Quality Healthcare is a Right

Ex B⁴

*"I don't know why
he did nothing while
Mia was suffering her
injuries"*

Mia & Baby Kayleb



Mia House was my baby, the youngest of my eight children. She went into Norwalk Hospital to have a Caesarean section. This was Mia's first child. While she was under anesthesia, Mia was not getting enough oxygen and the doctor who should have been watching did not notice. Mia suffered severe brain damage.

Mia's baby's name is Kayleb. Thankfully, Kayleb was not hurt like Mia. As little Kayleb's grandmother, I will raise her. When I bring Kayleb to the hospital to visit Mia, she cannot hold Kayleb, she cannot speak, and she cannot respond in any way.

Kayleb is still too young to know that, unless we are blessed with a miracle, her mother will not be a part of her life. Someday, though, Kayleb will wonder why her mother is confined to a hospital bed and unable to speak. The answer is why I am here.

The doctor who should have been making sure she got enough oxygen, her anesthesiologist, is named Jay D. Angeluzzi.

I don't know why he did nothing while Mia was suffering her injuries.

But, I do know that he injured another woman in the same way before. Her name is Sadie Kinder Cole. Her husband Herman and Sadie's children suffer as we do. They also have had the heart torn from their family.

After Mia was injured, we learned that Dr. Angeluzzi has been in and out of

psychiatric facilities over the years because of substance abuse. His medical license was on probation in Massachusetts. He even had to leave work because he was unable to function. Despite this, his medical license here in Connecticut was never restricted in any way. The hospital never did anything to protect his patients. That is why Dr. Angeluzzi was able to neglect Mrs. Cole and cause her severe brain damage. We know all of this because Sadie's husband Herman Cole fought the hospital in court to find out the truth.

After injuring Mrs. Cole, you would think that someone from the State would stop Dr. Angeluzzi. You would think that the hospital would protect its patients from this man. You would be wrong. Mia was hurt because the people who should have protected my daughter from this doctor didn't respond to the Cole

family's complaints. Despite his psychiatric problems and the way he devastated Mrs. Cole, Dr. Angeluzzi's medical license and hospital privileges were never restricted.

I am here today because I don't want another family to suffer as we have. Without Mr. Cole's persistence, we still might not know why Mia was hurt. If Norwalk Hospital or the State responded to Mr. Cole, Mia would be at home right now caring for little Kayleb -- holding her daughter in her arms as I once did with Mia. Instead, I will raise Kayleb and she will never know my lovely daughter Mia as she once was.

I ask you, please, protect patient's families. Do not let Mrs. Cole's and my daughter Mia's suffering be in vain.

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Quality Healthcare is a Right

Ex "B"

I agreed to undergo "minimally invasive" surgery. It was supposed to be "routine"...



Gus Velez

*I was dealt a
terrible blow that
will change my
entire life.*

I write to you today because last year I was a young man with a promising future as a Financial Analyst and upcoming marriage. Then, I was dealt a terrible blow that will change my entire life.

I had an inflamed colon and agreed to undergo "minimally invasive" surgery to correct it. It was supposed to be "routine." I would be in and out in a few days. But the doctor made a horrible blunder. During the surgery the doctor sewed up my aorta, the main artery in my body, stopping blood flow to both of my legs. As a result of that catastrophic error, both legs had to be amputated above the knee.

In medical terms it was an aortic transection with resultant bilateral trans femoral amputation. Translated, that means I have lost two legs and am confined to a wheelchair. What happened to me can be said in one sentence, but the implications of that event fill pages.

My fiancé has become the main breadwinner. I want to work again but I doubt if I will be able to do more than part time for quite awhile. This physical therapy is a lot harder than anything I did on the rugby field. The pain is ongoing and at times excruciating.

This didn't just impact me and my fiancé, my entire family has been affected. My brother and sister had a restaurant that my father had financially committed to. When the focus of the family became my disability and needs, they closed the restaurant and they all suffered financially. But they also got pretty depressed because they wanted to help me, to change the outcome of what had happened to me, and of course, they could not.

I need to tell people what happened to me because I want the public to know that we have healthcare professionals who are incompetent and a system that fails to do anything about it.

Gus Velez

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Quality Healthcare is a Right

Ex "B"

*The proposed cap
hurts only the victims...
upon whom physicians
have inflicted
irreparable harm.*

My son, Justin, now 13, became a quadriplegic at the age of 5. Justin now requires care 24 hours a day. Through no fault of his own, Justin needs someone to feed him, dress him and take care of all his personal needs. In addition to his not being able to use his arms or his legs, his bowels and bladder no longer function. He does not have enough strength in his diaphragm to cough. A tracheotomy tube has to be suctioned several times a day and monitored constantly for blockages.

Justin had a slow growing tumor inside of his spinal cord. After a week of mild symptoms, he was admitted to the hospital when the symptoms became more severe. The tumor was diagnosed the next day and surgery was scheduled for a later date. Justin's condition became slowly worse. Although he was not moving any part of his body, was not eating, and had not gone to the bathroom for over 20 hours, no action was taken to determine if there had been a change in the spinal tumor until Justin stopped breathing and slipped into a coma. At this point, he was put into intensive care, where it was determined the tumor had swelled, compressing his spinal cord. Justin was paralyzed from the neck down.

Justin was in intensive care for 50 days. Imagine the fear he had when he awoke from a coma; unable to move his body. Imagine my pain and helplessness when I looked into his scared eyes, unable to tell him everything would be okay.

Totally dependent upon those around him, Justin must have complete trust in his care givers. He is at the mercy of anyone who comes in contact with him. Justin now watches from the sidelines at the soccer fields on which he used to play, no longer a participant.

Cindy and Justin's friends



Justin has, and will continue, to face many obstacles in his lifetime. He has already undergone (6) surgeries (two of which were in excess of 8 hours). He will watch as his friends get their drivers' licenses and begin to date. Although a jury decided in July of 2003 that Justin deserved economic and non economic damages to provide financial resources for his future, he will wonder, just as I do, who will take care of him when his father and I are no longer able to do so.

Those in support of capping non economic damages argue that it is needed to save the healthcare industry. Caps on damages are not going to solve the numerous problems within our healthcare system. This "reform" will benefit the insurance companies and protect offending physicians at the expense of the victim. It is incomprehensible to me that a physician would want the pain they afflicted on others to cause further injustice.

Some physicians are threatening to stop practicing in Connecticut and move to another state to avoid paying higher premiums. I currently pay \$9,984.60 per year for health insurance for my family of four. This equates to 22.18% of my salary... there is no cap to the increases that I will have to pay to protect my family.

If the goal truly is to reform the healthcare industry, we need to seek reform in all areas and not target only the weakest - the victims of malpractice. Perhaps legislation should be proposed to place a cap on the amount of insurance premiums and not on the victims of malpractice, who are left to pick up the pieces.

The proposed cap hurts only the victims... upon whom physicians have inflicted irreparable harm.

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Quality Healthcare is a Right

Ex B

I was diagnosed incorrectly, medicated incorrectly, and lapsed into a coma.



Fred and Bonnie Frank

I was 37 years old and at the top of my career when this happened to me. I was probably 8th in the nation in my field; national and international recruiting. Twenty years ago I contracted a virus and was hospitalized. I was diagnosed incorrectly, medicated incorrectly and lapsed into a coma for two and one half months. That one sentence seems an inadequate way to describe an event that was so profound for my entire family and myself. My wife will go to heaven, no questions asked. My oldest son, at the age of twelve, had to become the "man" of the house. My income had disappeared.

Two and one half months in a coma means that everything atrophied. When I came out of it I had to learn to do everything again; even breathing and talking. I was in rehabilitation therapy for countless months in the hopes of getting back into society. And as soon as I could, I began to volunteer for whatever was in front of me, including coordinating the building of dugouts for my sons' baseball team. I am a doer, an activist.

Eleven years later (and bill collectors never stop asking for their money) I was able to get a job with

Connecticut Independent Living Center of Fairfield County. Today I am President of the Bridgeport Kiwanis, Treasurer of the CT Association of Centers for Independent Living and a member for a litany of other civic organizations.

I know I serve as a role model for people with disabilities because I haven't let mine stop me. I believe in giving back. Personal integrity has been an important asset but eighty percent of my come back had to do with malpractice outcomes. When my malpractice case was litigated there was no damage cap. A legislated cap would have made my emergence as a contributor to our society impossible. When it comes to integrity, the medical profession must do a better job policing itself and acknowledge mistakes when they happen. Otherwise the victim pays twice.

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Quality Healthcare is a Right

Ex B

Because of poor judgement she was born with cerebral palsy

Five years ago Sydney was born. Because of poor judgment she was born with cerebral palsy.

Sydney has been deprived of many of the activities that are experienced by other children. Sydney has yet to enjoy and probably will not ever enjoy any individual activity and pleasures that we all take for granted. She cannot dress herself; she cannot walk by herself, she cannot feed or communicate very well; she cannot brush her own teeth or bathe herself and she cannot even go to the potty by herself.

On the other hand, she gets to participate in many activities that children with normal physical development don't experience. Sydney gets to have two hours every week of speech therapy, two hours each week of physical therapy; two hours each week of occupational therapy and 45 minutes of aqua therapy and another hour of hippotherapy.

If Sydney were to be compensated for her loss of play time, family time and school time at a modest \$10.00 an hour, her total lifetime compensation would be more than the proposed cap and that's only a very small part of her pain and suffering.

I do not believe that there is a limit on the amount that is due to an individual that has been put into a prison within their own body or has suffered other permanent injury due to the negligence of a medical professional. I do believe that the insurance companies have done a great job in playing the doctors against the injured patient. They get to enjoy their profits and generous salaries at the expense of the physician or the injured.

Recently, many doctors have said that they have been forced into early retirement due to rising insurance premiums. In my industry, trucking, I have seen many trucking companies close operations due to exorbitant insurance increases. Just four years ago the average yearly premium per truck was about \$4500 and today that premium is about \$10,000 - a 220% increase. Yet 15 of the top 25 paid executives in the Hartford area are in the insurance industry with 2002 compensations of up to \$9.58 million with an average increase of 149% in only one year.

The insurance industry is the ultimate beneficiary while both permanently injured patients and good doctors are being financially penalized.

Brian Reich

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Quality Healthcare is a Right

Ex "B"

*"My chance for a cure
was thwarted..."*



"Mary Dietmann with her children, Laura and Chris and husband, Carey."

My name is Mary Dietmann.

My name is Mary Dietmann. I am a 42-year old full-time mother and a part-time nursing instructor I am a victim of medical malpractice.

Today I am battling metastatic breast cancer because the medical system failed me more than four years ago in a series of repeated errors.

In April of 1998, at the age of 36, I found a small mass in my right breast during a self examination. I reported it to my gynecologist. My gynecologist referred me to a radiologist for a mammogram, but he failed to properly refer me to a surgeon for further examination and biopsy, nor did he properly advise me of the need for a follow-up examination.

Compounding my gynecologist's mistakes, my radiologist wrongly reported this diagnostic mammogram as showing no abnormalities when, in fact, the mammogram showed a suspicious lesion in my right breast that should have immediately triggered additional diagnostic tests and treatment.

Only a year later, when I returned to the gynecologist in April of 1999, did the gynecologist refer me to a surgeon when he noticed the small nodule in my breast. Upon examination, the surgeon failed to recommend a biopsy or a follow-up exam. Instead he sent me to a radiologist for an ultrasound of the breast. The radiologist from the same group that misread the prior year's mammogram again missed the clear abnormality on the ultrasound.

Again, my chance for a cure was thwarted by the doctors' negligence.

Not until February of 2000, when I went to the surgeon with dimpling in my breast, was the cancer diagnosed.

By March of 2000, when I finally had a mastectomy at the age of 38, it was already too late; the cancer had spread to 9 out of my 14 lymph nodes.

Because my doctors repeatedly failed to diagnose an obvious cancer at an early and treatable stage, I have endured a limitless amount of pain, suffering, humiliation, physical debilitation, hair loss, and most of all, loss of my life expectancy. Today, I hang on to every day of my life, not knowing when I might have to say goodbye forever to my husband, children, family and friends.

Despite being a nurse myself, and having many friends in the medical community, I ardently oppose efforts by politicians to severely restrict damages in catastrophic cases like mine. If there is any good that can come from my suffering, I hope that my case can convince officials that the answer to rising malpractice costs is to tackle the huge problem of medical error and malpractice instead of blaming the victims.

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QUALITY HEALTHCARE IS A RIGHT

E" B"

Was there prescription error and bad medicine practiced? Absolutely!

From May 8th until our mother died on June 23rd 2004, we had someone with her 24 hours a day. We had to. We could make sure medication arrived on time and that it was the right medication. We were the continuity of care that patients so desperately need yet are not getting in today's hospitals.

Confusion over prescription's, differences in what physicians said they were prescribing and what was given, lack of communication on how the drugs were to be delivered, specialists prescribing drugs without a comprehensive understanding of medical history, weekend "blackouts" of care, confusion over who had the ultimate medical responsibility - all were the order of the day.

In today's medical delivery system our family had to understand and coordinate her care in the hands of a pulmonologist, cardiologist, vascular surgeon, primary care physician, colorectal surgeon, and an infectious disease specialist. Add to that the ever-changing nursing staff, and hospital residents and doctors covering for other doctors. With our mother, we lived in a bureaucratic healthcare maze that challenged and frustrated us and put her at great risk. Among all those health "care givers" there was little understanding of the whole person that was my mother. Many times it seemed to be "diagnoses's by specialty.

Our mother has died. Was there prescription error and bad medicine practiced? Absolutely. Does this rise to a medical malpractice lawsuit? It may not. But one way our family can go forward and honor our mother is to let the public know that they are at risk. Even with 24 hour advocates it is often not enough. We must demand coordinated care, computerized prescription entry and for the elderly, computerized patient care. If doctors cannot talk to each other, perhaps the computer can.



Stephanie Theresa Lukas

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Quality Healthcare is a Right

Ex^uB⁴

Twice I asked the doctor to do an ultra sound... He looked at me like I was crazy.



Todd Milhomme — 4 1/2 years old

*"Why should he
and the rest of us
pay for the mistake
that doctor made?"*

Twenty five years ago I was pregnant with our third child. But in the course of my pregnancy I became convinced that I was carrying more than one baby. Twice I asked the doctor to do an ultra sound, he looked at me as if I was crazy. When I experienced a lot of pain at 7 and one half months, the doctor said I should be induced. My labor began and he quickly realized there was something wrong. He called in a specialist and that specialist said to my husband "It's too late, he's already induced her, but she is carrying triplets. Two more weeks and they would have been fine."

Two of my sons died that day. But Todd lived. Since then he has lived with cerebral palsy and learning disabilities.

It is important for you to know that when there is a victim like Todd, the entire family is impacted. I have been a machinist, a department manager and when Todd could work, I worked with him as a janitor. But many times I have had to leave jobs because I had to spend so much time getting Todd what he needed within our school systems, at doctors' offices, physical therapists to say nothing of the struggle to get him job coaches and support from social service agencies. Health providers and public institutions seem always to find a reason to not do something rather than provide a helping hand.

We built an apartment for Todd in our basement. We want to see him be able to live as independently as he can. For a while he had a job at a mushroom farm earning \$7.50 an hour. He liked this work. But the farm was closed and his new job, working on a work crew outside, pays just \$4.25 an hour. That's not even minimum wage, but I have to fight for him even to get that.

My two older daughters have been wonderful. We are a close-knit family and support each other in every way we can. We have to fight to get what Todd needs and he needs a lot. We know the costs of malpractice, not just to one victim but to the family members. Capping awards would only make these situations so much worse. I think doctors just don't want to be sued. I would like to see them be as responsible as we have had to be.

I am against capping malpractice awards because taking away Todd's right to confront the doctor responsible for his condition would victimize Todd twice. Why should he and the rest of us pay for the mistake that doctor made?

Sharon Milhomme

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Quality Healthcare is a Right

Ex B

When a doctor destroys the life of his patient he also destroys the lives of her family.



Agnes Elizabeth Kaldus,
Greenwich Connecticut

I was crazy about Manhattan. I would get off at Grand Central Station and think I was in Heaven, but very often I would drive into the City. I was a member of the Met. I loved the opera. I was a walker, walked all over town, but mostly in the mornings around the track at a nearby school. I traveled extensively, across the country by car and flew to many countries in Europe. But that's all over now. I'm confined to a wheelchair, in diapers and in pain, all of this because of a flawed diagnosis and incompetence.

On Memorial Day weekend, 1999, my friend and I had plans to spend a nice day. When she called on me to go out, I had garbled speech. She tried to contact my family but no one was home. So, she took me to the hospital. Barbara, who is my sister, arrived shortly thereafter. A neurologist suspected meningitis and asked if he could do a spinal tap saying I may have bleeding to the brain and would be dead within 24 hours. Barbara consulted with an older sister, Caroline, who held a very important position at the hospital at one time. Caroline said that we must trust the doctor and O.K. the request. Immediately after the spinal tap, I had great pain and was sedated. The neurologist and attending nurse disappeared. Barbara heard from the doctor four days later.

My family arrived the next day at the hospital to find me sedated but still in great pain. Barbara telephoned her concern about the great pain I had in my spine to my medical doctors the next morning. My family was pleading with everyone to do something for me. Nothing was being done.

Four days later the neurologist telephoned Barbara to say he wanted to do a further test on my spine because he couldn't get anyone to do an MRI. Barbara said that another sister had been the X-ray technician in charge of that department for over thirty years. Said to mention her name and everyone would come running. When Barbara arrived at the hospital, I was on a gurney going to have an MRI. Shortly thereafter, a concerned neurological surgeon arrived and asked permission to do an laminectomy. He said he didn't know if he could save me medically but that I was paralyzed and incontinent.

At the hospital I was being transferred from the bed to a chair via a lift when the lift collapsed. I fell and received a large hematoma on my head. Several weeks later, I was transferred to a rehab hospital where I was to receive intense physical therapy. The physical therapy was limited because I had bedsores and phlebitis. They were anxious for me to leave. Then I went to a very pretty nursing home. The prescribed doctor hardly ever visited me and later I learned from the local paper, that he had been arrested for being on drugs. A water pipe broke and gushed in through the light fixtures over my bed and saturated my entire room, I was yanked out of bed fast. A few days later I ended in the hospital with an infection. I was transferred to a local nursing home receiving good care despite my frequent returns to the hospital for infections and seizures from over medication. With the first seizure, I bit my tongue in two.

This neglectful episode has taken a toll on my entire family. When a doctor destroys the life of his patient he also destroys the lives of her family. My sister has devoted herself to my care. She is now suffering from a serious back problem and stress. Her husband, although he has had two cancers, problems with his heart and replacement of three joints, takes me out as often as he can along with Barbara. My retirement income, all my personal treasures, and money received from the sale of my home, pays for the costly expenses of the nursing — over \$10,000 a month. I now have one room instead of a beautiful home.

Again the holidays are approaching and it is so sad. I was considered a good cook and loved to prepare dinners for my friends and family. Holidays were always such a beautiful family gathering. Now I am in a wheelchair and limited to where I can go.

The doctors complain that their insurance costs have increased. If that is so, the obvious reason is because there are too many mistakes being made by careless doctors. I don't know of any doctor who has left his profession because he couldn't afford the increase. Most doctors have a beautiful house, backcountry with all the amenities' boats, fancy cars and second homes. I would like one of them to take my place in the wheelchair in diapers for one week and see how it is.

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Quality Healthcare is a Right

Ex "B"

When mistakes are made hospitals need to tell the truth.

*Testimony before the Insurance Committee
March 4, 2004*

I was born between the wars in a small village in France, near Grenoble. By the time I was 2, both my parents had died and my brother, sister and I were raised by an aunt and uncle. Then the war came and the Germans took over the countryside. My Aunt died because the Germans had a curfew and when her appendix burst the doctor could not go to the small clinic nor come to our house.

But the end of the war brought a new beginning for me. I married and moved to the United States. My husband was very special, not just to me but to his fellow employees at Pitney Bowes and to our relatives and to the good friends we made here. He always had a game he would make up and all our guests would enter in and play. We built a chalet on the side of a hill in Stamford and it reminded me of my origins. We both loved to work outside and garden. We planted trees, built walls and enjoyed our sylvan retreat.

The day before my husband had surgery to remove benign tumors, he rebuilt the railing on our deck. The next day he went in for surgery. Twenty days later he died of an infection, malnutrition and dehydration.

I knew that there was a problem with my husband's condition several days after the surgery when he developed a fever. Whatever caused the lack of continuity in his care, he became severely dehydrated, and just deteriorated before my eyes. After he died, it took me months to obtain his records. The hospital said they would provide them, but just kept stalling and stalling.

We must do something about the quality of our health care in our hospitals. There are too few nurses, and the system of rotating them means that they do not observe the changes in a patient from day to day. Who is in charge? The doctor who runs in for a few minutes in the morning? He or she may not even be the doctor



*Marcelle Franchinot,
Stamford, Connecticut*

who did the surgery. Patients are supposed to bring their own advocates but can they be there every day every minute? Isn't that the job of the hospital?

When mistakes are made hospitals need to tell the truth. Please don't tell me that my husband's surgery was successful. What is happening in our hospitals is the fault of the hospitals and the doctors who commit the errors. The public must be told about what is happening in our hospitals.

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Quality Healthcare is a Right

Ex B

*At birth, Tony was given
only 24 hours to live...*



TONY JOHN SABIA

Berry Werth wrote a 370 page book called Damages. This book is about the Sabia Malpractice case, the story of what happened to my son Tony — and our family.

My wife Donna went into labor on April 1, 1984. We were expecting healthy twin boys, Michael James Sabia was still born and Tony John Sabia (Little Tony) was barely clinging on to life. Little Tony was given only 24 hours to live, But he did live and now is severely disabled, unable to feed himself, speak, or let us know his needs. Something had gone very wrong. The doctors had known the boys were growing in utero at different rates, but they never considered that this was a high risk pregnancy or delivery.

We always believed that we should take care of Tony at home, and at the beginning it put a severe strain on our family emotionally and financially. I worked two jobs, day and night just to make ends meet, but still fell behind. Finally two years after he was born we contacted a lawyer about filing a medical malpractice lawsuit against the doctor and the hospital. We needed help! I worked so much I missed my kids growing up, my family, my wife, and some things you can never get back. Just think, a doctors lives with it 5 minutes, 5 days, 5 months, maybe even years, but a family... well it's for life.

It took nearly seven years to resolve this lawsuit, and during that time my family worked hard trying to make ends meet. It didn't work, we just sank deeper and deeper into debt. I saw first hand the big institutions that we were up against. Knowing each of them would fight to protect their own turf. Little Tony didn't seem to matter to these people, not any of the doctors or the insurance companies. Each postured and threatened in order to serve their own needs, and not the needs of my family.

At the beginning I wanted justice! I wanted some kind of acknowledgement that the hospital, doctors, and nurses had screwed up. Instead my family had to settle without that acknowledgement. But financial settlement has eased our burden. If any of those people involved, hospital, doctor, nurse, etc.... had to walk in our shoes for one week they would understand that it isn't about the money, it was about survival for my family!! Some of the Institutions stated "Why should we pay, when he's going to die anyway!" Needless to say Little Tony has had 8 major surgeries in his life and has survived. This does not include the numerous Emergency room and hospitalizations he's had during his life. On April 1, 2005, Tony will be 21 years old. What a big difference from only 24 hours to live.

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Quality Healthcare is a Right

Ex B

I want my life back.



MARILYN JASMIN

My husband died of a massive coronary when he was just 41 years old. Our youngest had turned two and I had no idea how I would raise our five children. But I was fortunate and found another wonderful man – we have been married now for thirty years and he helped me raise the children. They are smart and good people. We have a close warm family; nineteen grandchildren and they all live in CT.

But what happened to me in May 2002 has changed everything. I am an insulin dependent diabetic and I needed back surgery. The surgeon did an excellent job and everything was fine but he had to go

out of town just after the operation. Three days later I was shipped to a nursing home for recovery, a little bit earlier than planned because the hospital was crowded.

He says he gave orders to give me antibiotics to prevent infection but the nursing home says that they never got those orders.

Six days after the operation I woke up screaming in pain and was ambulated back to the hospital. When the surgeon saw me, I was immediately taken into surgery and filleted like a fish. He scraped and scraped to get the infection out.

Thirty years of savings are now gone and my poor, dear husband, at 74 has gone back to work. Our lives have been turned upside down and I am in pain all the time. Since that day I was returned to the hospital, I have never walked unaided. And now, because of the massive dosages of antibiotics I had to take, I have other medical complications. Now I take prednisone and percocet for the pain. I fall and need a wheelchair.

I can't turn off the pain.

I can't turn off the money problems.

I wish you could have seen me when I was younger. I am so ashamed of how I look now. The steroids have added 60 pounds and it makes it even harder to get around. I wish you could have seen my house when I could clean. I wish you could have seen the garden. I want my life back.

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Quality Healthcare is a Right

Ex B

*I continue to
be haunted by
my experience.*

I am a victim of incompetent and negligent anesthesia during my Caesarean on March 9, 2003. The anesthesia team consisted of an MD and a Certified Registered Nurse Anesthetist (CRNA) who failed to diagnose inadequate spinal anesthesia. I did my best to convince the nurse anesthetist who was sitting next to me that I was in pain and that the right side of my abdomen was not numb.

At first she told me that I was just feeling pressure. I persisted with my complaints and she suggested that I breathe through it. I was paralyzed with fear and pain as she dismissed my complaints. As my surgery progressed I said that the anesthesia was wearing off but was ignored.

In the recovery room, I told the CRNA that I could feel my feet. She saw me move them, too. She continued to dismiss my complaints. In addition to suffering incomplete anesthesia during surgery, I had to wait for pain medication after surgery because the anesthesia team failed to place an order for the proper medication, Demerol, until after I arrived in the recovery room. Before surgery I informed the MD that Morphine did not work for me and that I required something else. They failed to place the order before surgery and then had great difficulty locating the Demerol in the building. Throughout ordeal, no one asked about my comfort.



Denise Heinen

When I told the OB about my experience, he too dismissed my complaint. I wrote a letter to the hospital administration and they told me that no one perceived my pain. I filed complaints with the DPH and they chose to do nothing.

"Current anesthesia standards were met," they all said. But current standards do not require anesthetists to

assess and record pain as a vital sign at the same interval as pulse and blood pressure. Solution: Change the standard!

I continue to be haunted by my experience. I now suffer from serious tremors. How could two people, the MD and CRNA, disregard my pleas when their very job is the alleviation of pain?

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Quality Healthcare is a Right

Ex "B"

My faith and trust in physicians have all but disappeared.

The dictionary defines "frivolous" as "lacking in seriousness, without importance." This is my experience with a "frivolous" malpractice incident in the hands of "healthcare professionals."

It was supposed to be a relatively simple out-patient procedure, and I was assured I'd be home in two hours. I entered the hospital for the placement of a "central line" necessary for IV antibiotics for the treatment of advanced Lyme disease.

The line, inserted by a radiologist, caused me excruciating pain immediately. I screamed. The line had been forced out of my vein, hitting nerves. He continued threading the line through my upper arm, despite my repeated screams. I began to lose feeling in my hand. The doctor removed the first line and inserted a second, this time supposedly correctly. But when I tried to move my arm it flopped lifelessly on the table. I feared I was paralyzed, as did the doctor, who then removed the second line as well. I was suddenly left alone, in tremendous pain, and terrified.

In the recovery room the nurses quickly assessed that I was injured, and ignored me. Eight hours passed. They gave me nothing for pain although I asked repeatedly. I wasn't allowed to make or receive phone calls. I left the hospital, relieved to be going home to seek help. But I was leaving with permanent nerve damage in my hand and a blood clot forming in my chest. I am alive today only because the clot was large enough to lodge inches from my heart, averting a pulmonary embolism.

The only follow-up by the hospital were the efforts to protect itself.

Getting medical help for my injuries turned out to be as painful emotionally as it was physically. For two years, I persevered, seeing 18 specialists. Seventeen wanted nothing to do with me because of the cause of my injuries. Only one tried to help. The doctor who injured me was paid \$5,000.

Six months later I had to go through the same procedure and was petrified. At that time the clot was discovered, I was told that it was "stable." Ten months later I was told to go to the intensive care unit "for the weekend" to dissolve the clot. But another doctor advised me that the risks were too great. I had had a close enough brush with death. So my "stable" clot remains.

When I asked my HMO for an "explanation of benefits" for this "error" and its consequences, it was 49 pages long.



Jeanne Konecny

The financial cost to my HMO? A total of \$28,506 – all caused by a doctor who was never held accountable.

But even more serious than the cost was the falsification of my hospital records. Almost all of the specialists whitewashed the rest of my records. I had a case, but hiring the 6 medical experts to support it proved too costly. So "frivolous lawsuits" sounds more like an oxymoron to me than the reality of medical "errors."

My faith and trust in physicians have all but disappeared. "Do no harm?" Injuries happen and no one is held accountable, no one is responsible, and seemingly no one has a conscience. This has changed me for the rest of my life. My pain reminds me every day.

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Quality Healthcare is a Right

Ex B

Her death has never been explained and many questions remain.



Mary Ann Piccolo

No one will listen. I cannot understand why doctors either promised to get experts and specialists and then didn't, nor can I understand why all of the institutions we dealt with were asked to test and treat this woman carefully because of her retardation and then didn't. No one seems to care that I believe my little sister didn't need to die. She died on September 15, 2001 of pneumonia and why she died has never been explained to me.

Mary Ann required special care. She was just six years old when it was confirmed that she was mentally retarded and that was in 1962. While she suffered two epileptic seizures as a child, Phenobarbital was highly effective in treating her. She had only two seizures in 15 years.

My mother and I became very concerned when Mary Ann's behavior changed. She had hot flashes, vomiting, and was sometimes disoriented. Something was going on and we wanted to know what it was. We notified and inquired at the DSS, the DMR and two hospitals for guidance. We were ignored. Even her caseworker ignored us. On June 11, 2001 she began to rock her head back and forth and slipped into a coma. Three months later she died.

The two doctors who treated her told the state of Connecticut Department of Public Health that a seizure had caused her pneumonia. We asked for an investigation. But we were kept in the dark. No doctor spoke with us after her death and the funeral director, stranded in Florida due to 9/11 had her embalmed even though I told him I was consulting with an attorney because I had many questions.

Her death has never been explained and many questions remain. I am as angry at the bureaucratic indifference to her death as I am to the poor care she received. Was it because she was retarded? We were her advocates but even then it didn't help save her life.

I am devoting my life to trying to expose the flaws in our healthcare system. Something must change.

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Quality Healthcare is a Right

Ex "B"

My name is Benita Toussaint.

I am a mother of four whose life was turned upside down in 1988. My problems began when I was pregnant with another child. My water broke in the fifth month of the pregnancy and I was admitted to the hospital. By the following day I was running a high fever and the doctor said I would have to be induced. My labor was induced by an untrained intern. The baby died and the placenta would not come out. The doctor punched and punched my stomach and finally put me under.

After that I could not hold a pregnancy. I had two more pregnancies and the last of the three was in 1991. This time, the physician mistakenly tied my left ovary and Fallopian tube to a stomach wall. Afterward the pain I experienced for the next 13 years was enormous.

Because of the continuing pain, I was told to go see an orthopedic surgeon. He referred me to a psychiatrist. No one would listen to me about the pain. In our healthcare world, you just keep getting handed off to yet another doctor who won't listen and answer questions.

Finally this past year, 2003, fifteen years after my initial problem began, I was told that the nerve root had grown together and my left ovary and fallopian tube were creating the pain I had been experiencing all these years. In March 2004, another doctor found the harm that had been done to me and had made me so ill. But I still suffer pain and anguish.

How could people so profoundly harm another individual under the guise of care?

How could people so profoundly harm another individual under the guise of care?



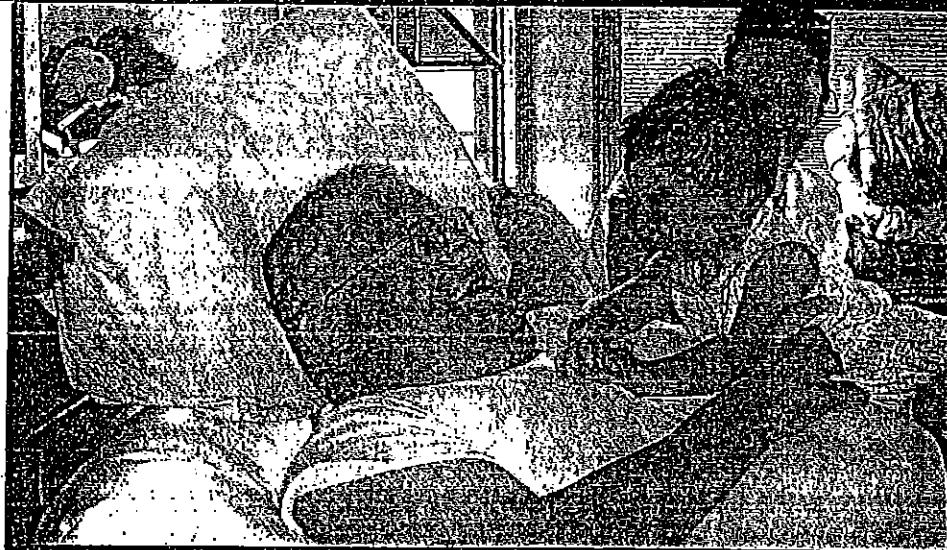
Benita Toussaint II

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Quality Healthcare is a Right

Ex "B"

"When malpractice occurs it is just the beginning"



RORY FREEMAN

I have always been a fighter and so has my husband, Rory. I have even thought about going to law school to be a more effective advocate and somehow try to do something to change the system.

This all began over 10 years ago when Rory was just 37 and our kids were eight and three. Rory slipped and fell on his back. This began our odyssey through the healthcare industry. Let me be clear. We have had some wonderful physicians to whom we will always be grateful. But we have had incompetent doctors whose arrogance has led to flawed decisions.

Briefly put, a neurosurgeon performed the wrong type of operation, operated on the wrong spinal levels and failed to relieve spinal cord compression and further injured an already injured spinal cord. As a result Rory suffered paralysis, bowel dysfunction, bladder dysfunction, intra operative brain damage, multiple strokes and short term memory loss. Excruciating and disabling pain has led to depression.

As awful as that sounds, it does not really convey the depth and breadth of this experience for our family. Rory is confined to a hospital bed most of the time and that wonderful mind of his, which had a photographic memory, now has cognitive short term memory problems. And our children have grown up not being able to camp or hike or do all those wonderful things kids do with their father.

What I have learned;

- When malpractice occurs it is just the beginning. Because of that error, bad things just keep happening. Rory gets pneumonia about twice a year now. When he has been in rehab or the hospital he sometimes gets staph infections which continue to weaken him. A staph infection that was introduced to his system during his original surgery, continues to recur from time to time, and smaller insults to his system often have grave consequences.

- When one thing goes wrong a hundred things go wrong. You can only do what you can do. Problems continually crop up and we both work to solve them one problem at a time.

- There is no normal - only what has become normal to us. We now have a severely limited access, as individuals and as a couple and as a family, to the texture and diversity that life has to offer.

What we have lost is priceless. Yet it is grossly unfair to place a restriction on our right to justice and recovery in the face of this profound loss. Victims' full access to the courts must be preserved. And every effort must be made to reduce situations of malpractice in the first place.

— Lisa Freeman

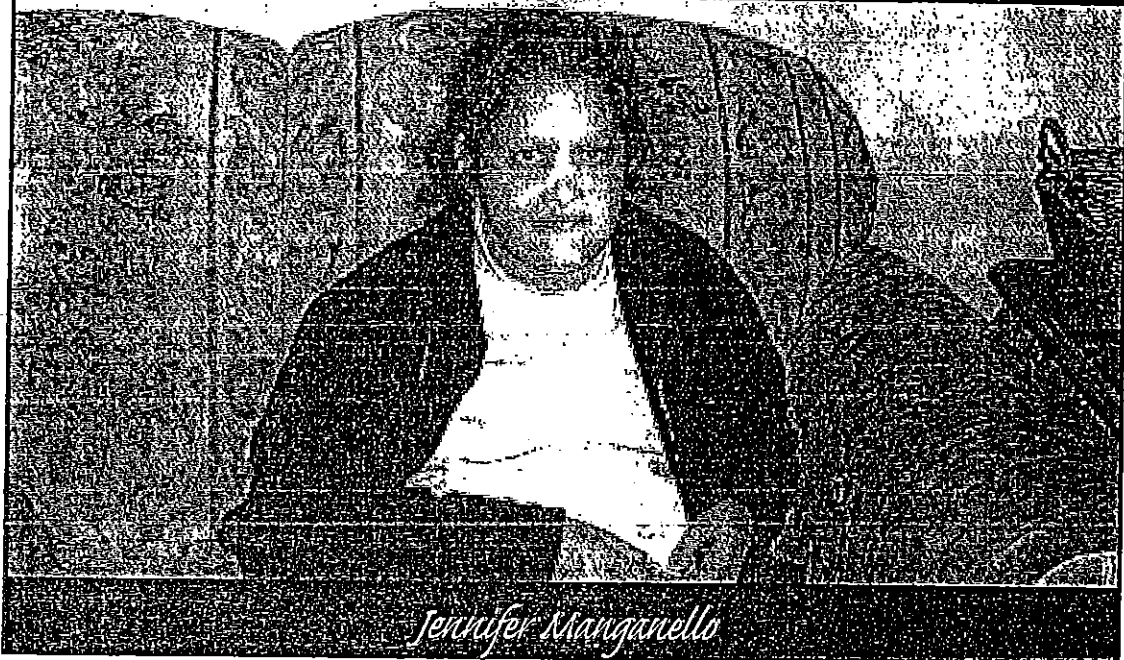
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Quality Healthcare is a Right

Ex "B"

*she is a prisoner in her own body.
There is no escape.*



Jennifer Manganello

My daughter Jennifer became significantly disabled following a spinal fusion four years ago. Because her case is still in litigation, I cannot discuss the details of the surgery. She was fifteen years old at the time.

As a result of the surgery she is primarily wheelchair bound and has very little endurance.

Secondary to the nerve damage along the thoracic and lumbar region of the spine, she suffers from a neurogenic bladder, chronic and recurrent urinary infections and reflux from high pressure into the kidneys. Complications have intensified and she was recently diagnosed with end-stage kidney disease. She now requires regular kidney dialysis to stay alive.

Since her original surgery, she has had many hospital stays.

One was for suicidal depression. She is a prisoner in her own body. There is no escape.

Never to run again, work after school, never mind attending school on a regular basis. Who can put a value on that?

She cannot work and cannot live independently. Who will care for her in the years to come?

It is wrong to try to solve this problem of medical malpractice rates by limiting patients' rights. Jennifer's non-economic damages may make the difference between a future with some quality of life and one of a dismal existence in a tax-supported care setting.

Susan Manganello

CT Center for Patient Safety

CT PATIENTS' RIGHTS, CPR

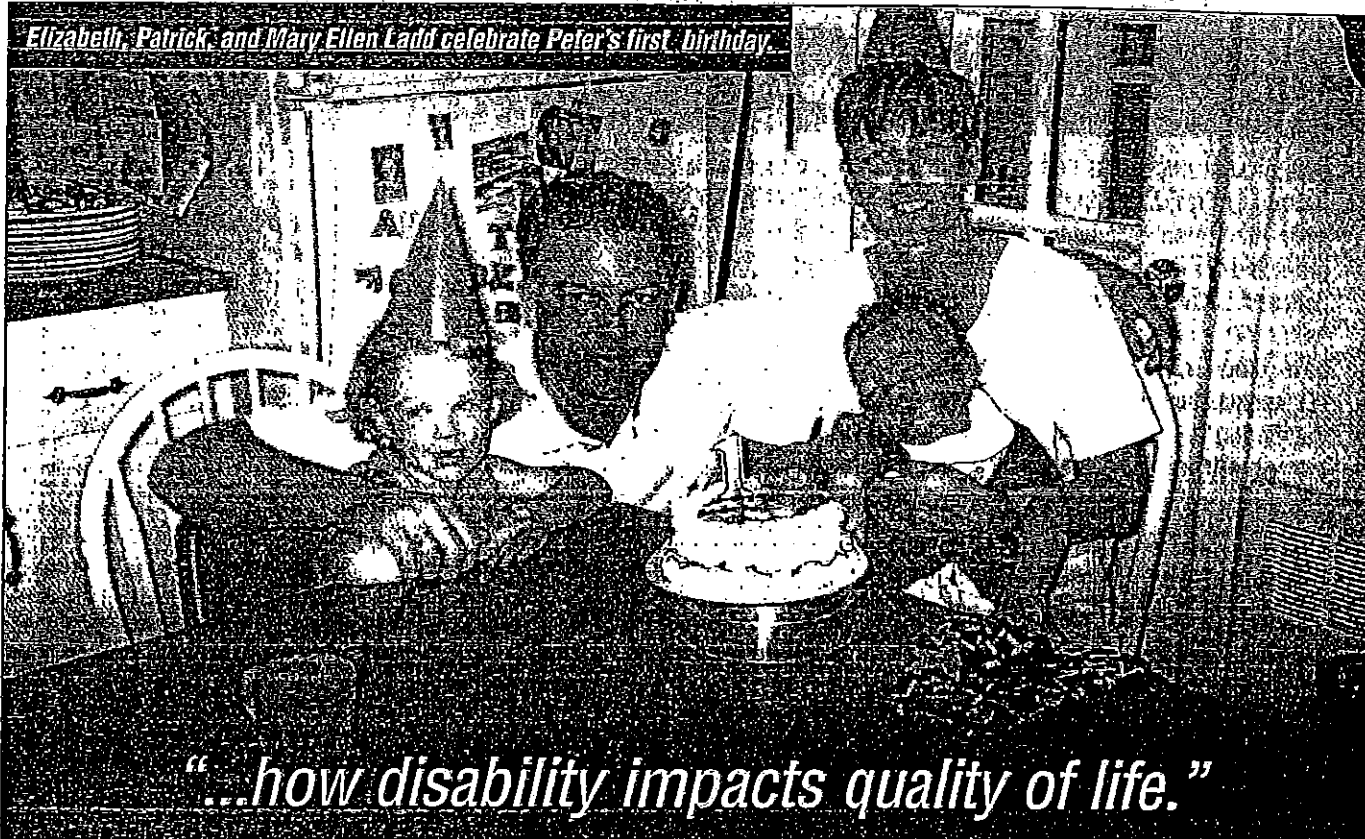
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Quality Healthcare is a Right

Ex B'

Elizabeth, Patrick, and Mary Ellen Ladd celebrate Peter's first birthday.



"...how disability impacts quality of life."

Our son Peter is 2 years old. He has cerebral palsy, a seizure disorder and a gastrotomy tube in his stomach because of feeding difficulties. He is still unable to roll over, sit, or hold on to objects. He needs adaptive equipment including very expensive feeding chairs, strollers and standers. For tube feeding, Peter requires special medical equipment and a nutritional supplement that costs almost \$200/month. Most of these supplies are not covered by insurance.

We believe that his birth injuries were caused by the negligence of the two doctors who were involved in his delivery. Obvious warning signs were ignored and, as a result, Peter has a lifelong disability.

Doctors are calling for caps on non-economic or "pain and suffering" damages. They say that \$250,000 is enough to compensate Peter for a lifetime of limited abilities and extraordinary challenges. They say that a cap is fair because injured patients will still be paid for economic losses like medical expenses. Well, capping non-economic losses is severely limiting and discriminatory to children (as well as to many women and the elderly) because children are not wage earners.

Non-economic losses are not just about transient or recurrent pain and suffering. They are about compensation

for *permanent disability* and how *disability impacts a person's quality of life*. And they are about accountability for negligence.

Everyone needs to pay attention to what caps really mean to the thousands of people out there who are going to be the victims of medical malpractice in the years ahead. If they could visit our home and see what life after medical malpractice is really like they would never accept a future in which their recovery for "pain and suffering" - lifelong disability - would be limited to \$250,000.

We need to continue to make negligent doctors accountable for their actions. Hospitals and doctors must enact the kinds of system reforms that have been shown to prevent medical error. 5% of doctors nationwide commit over half of all malpractice. Why are they still practicing?

Legislators must act - not to limit victims' rights, but to require the medical community to reduce medical error.

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Quality Healthcare is a Right

Ex "B"

"My father went in for a routine surgery... eleven days later he was dead."



Rudolph A. Passero, Jr.

It's called Polycythemia Vera, the Mediterranean sickle cell disease, an over-abundance of red blood cells. But that's not what killed my father. What killed him was bad medicine and careless decision-making. Based on the recommendation of his primary physician and his urologist, my father went in for a routine surgery to remove his prostate. Eleven torturous days later he was dead.

My Dad's name was Rudolph Anthony Passero, Jr., or Rudy for short. He had been a dentist in Norwalk for many years, and was an important part of the community. He always participated enthusiastically in the many events in which my brother and I were involved. We miss him very much.

At a pre-operation appointment, he informed his urologist that he had Polycythemia Vera and wanted to know if that effected surgical procedures. The physician insisted that it didn't matter; no special measures needed to be taken.

But it did matter. Soon after the first surgery, it became clear that there was a lot of bleeding. The blood of people with PCV doesn't clot like normal people but the doctors didn't take this into consideration, even as he continued to bleed internally. My father's stomach was badly distended. Strapped to a hospital bed in the recovery room, he repeatedly told my brother and mother that he felt he was not getting enough oxygen.

Over the course of two days and two additional exploratory

surgeries, his problems grew and his health deteriorated rapidly. The doctors knew that there was bleeding but not the extent. He was put into intensive care and on a respirator and lingered in a confused and irritated, drug induced state. Whisked off to a quiet floor in the hospital, my mother, brother or I was by his bedside for more than a week. We were repeatedly urged to take him home, even though he could hardly get out of bed with assistance. On a beautiful summer Sunday, he died of a pulmonary embolism, a large blood clot, ironically, that the doctors say dislodged itself from his leg.

Standard procedure, prior to surgery, for anyone with Polycythemia is to perform a course of blood work over several weeks to prepare the patient's blood to handle the trauma of surgery. A family friend found this information on an internet web site and sent it to us. Sadly it arrived after my dad had died. No one, not his primary physician, surgeon, nor the hospital, has ever explained what happened.

I want to see change in the system. I would like to see mandatory continuing physician education and evaluation to ensure that the pre-operative procedures that might have saved my father's life are known and practiced. Computerized data bases of patients and their conditions, medications and standard courses of care might also be a positive step to improving outcomes.

Most importantly, I want to see accountability. A readily accessible, up-to-date database of doctors and their history of patient care including malpractice settlements, jury awards and actions would help patients make more informed decisions about their health care providers. Doctors with previous settlements or actions, according to the research submitted to the CT General Assembly, often have multiple infractions. This information may have helped our family to be more informed consumers of our health care services instead of blindly trusting the opinions of our doctors who apparently did not do their homework. The medical establishment has waited long enough to institute change. Now it is time to legislate it.

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Quality Healthcare is a Right

EXB

It seems that the way to reduce the cost of malpractice is to stop tragic injuries like hers from happening in the first place.



Katty Chavarria

She is a bright little girl trapped in a body that won't work for her.

Katherine, we call her Katty, was born almost five years ago on January 1, 1999. She was our first child and my husband rushed me to the emergency room when I went into labor. I had been diagnosed with a separation of the placenta, bleeding and indications of fetal distress when I was eight months pregnant. But the obstetrical staff gave me a labor-inducing drug, pitocin, and delayed performing a caesarean section. My baby suffered severe oxygen deprivation with resulting brain damage and cerebral palsy.

Katty was in intensive care for two months and has already had two surgeries. She has serious reflux problem and has to be suctioned frequently. She'll never be able to eat-she has what they call a G tube for eating. I can't just leave her because I never know what she might need and I am the one who knows how to do it.

But she is a bright little girl trapped in a body that won't work for her. She gets very frustrated and cries and carries on. But she is smart. We can see her mind working and she has had enough body control to begin to learn how to sign. She can "sign" daddy, hungry, apple, goodbye. I was told she would probably just lie on the floor for most of her life. But that's not true. She is smart and she follows a lot of what is going on around her. She is amazing. She will never be able to cross a street, write her name or live a normal life. But she is still amazing.

Katty faces a lifetime of extraordinary challenges because of her reduced capabilities. Restricting a jury from compensating Katty for the way her life was changed is wrong. It seems that the way to reduce the cost of malpractice is to stop tragic injuries like hers from happening in the first place.

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Quality Healthcare is a Right

Ex "B"

*I was told it was minor surgery and
I would be bringing her home in an hour.*



Sadie Cole



My wife Sadie was 36 years old when she went to the hospital to have her tubes tied. I was told it was minor surgery and I would be bringing her home in an hour. It turns out, Sadie had monitors on during the surgery but nobody was paying attention to her blood pressure which had dropped dangerously and damagingly low. Now she is in a coma. And has been in this persistent vegetative state since July 1998.

This should not have happened. Two summers ago the same anesthesiologist was negligent in another case; yet another woman in a coma. The Department of Public Health has concluded that he suffers "from a psychiatric or neurological illness that disables him." But if everyone had paid attention, this physician would never have been allowed to practice unsupervised. Earlier in his career, he had passed out during surgery. He moved to another state, and practiced with supervision. And then he returned to CT. Didn't the hospital check? Didn't the practice he joined

look into his background? Surely nurses and other physicians had noticed he had problems.

Yet no one spoke up. Five percent of the doctors are responsible for over 50 percent of malpractice payouts. CT's Medical Examining Board ranks 40th in the country in getting rid of bad doctors. Their silence is profoundly dangerous.

My family found out tragically that the medical profession is silent about its own problems. And they are silent when a tragedy happens to us. This is a broken system.

I go see my wife everyday and our children visit her often. We hope that someday she will wake up.

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Quality Healthcare is a Right

EXB

Matthew Gersz

On January 16, 2001 our family was devastated by the loss of our beautiful son, Matthew David Gersz, at the age of 22. Matt was our first born son and the first grandchild on both sides of the family. You can imagine the joy he brought into all of our lives. From the beginning, he had that cheshire-cat grin and that gleam in his eyes. He always loved joking around, making others laugh and teasing his brother, Peter. He loved all sports and was a good athlete himself. He was a kind, thoughtful, and loyal friend and he had many, from all walks of life. He had a girlfriend, Heather, who he loved dearly, and when he wasn't with her in Boston, he loved family gatherings, going to the movies, fishing, and his favorite activity—going out to eat.

Things began to change for Matt, when at the age of 19, he was in a serious car accident. He was hit broadside by a drunk driver, who left the scene on foot. Matt's injuries were life threatening and he was hospitalized for 13 days. We were overjoyed when Matt fully recovered and he returned to work a few months later. Later that year we noticed changes in Matt. This is when he began seeing Dr. Khu. Matt was given huge amounts of narcotics and controlled substances for scoliosis, a condition that wasn't an issue for Matt. We had no idea he could be prescribed the amounts given, especially since he had no condition to warrant their use. Confidentiality

laws prevented us from obtaining his medical treatment. Family concerns and pleas with Dr. Khu to stop prescribing, were ignored.

Matthew saw Dr. Khu on Jan. 16, 2001, the day of his death, and was given 4 prescriptions, 2 of them post-dated. Matthew died soon after at home. The doctor was charged with manslaughter, reckless endangerment, and post dating scripts. It was at this time that a complaint was filed with the Department of Public Health. We found the two and a half year ordeal with the DPH completely inadequate. We weren't notified of upcoming hearing dates, and when we arrived the hearing would begin late (unprepared lawyer) postponed, excused early and so on. I also provided the attorney with valuable printouts of actual prescriptions where Dr. Khu clearly exceeded recommended dosages on numerous occasions, of which this material was never presented. Most importantly, though, I was refused my request to make a statement. I thought it would be important to let the panel know that my son was perfectly healthy, and didn't require any medication, especially opiates. This past December the panel met with the board. A new committee member suggested the removal of his license. He was immediately shot down by a committee veteran who said, "taking away a doctors license is too draconian". The decision the board recommended was a permanent restriction on his license. He can no longer treat chronic pain patients. We were disappointed with this decision as it still puts the public at risk. On Jan 22, 2004 the courts had to do what DPH failed to do, and banned him from practicing for a year. Why the different outcome, when they had the same facts? The truth is the DPH only investigates 8% of complaints against physicians and health care facilities. They are there to protect the health of Connecticut residents. Instead they are putting the public at risk by failing to act promptly and appropriately against these egregious abuses.

I want to see our legislature demand changes. We need a professional, impartial staff to review the cases. We need to insist that physicians file adverse event reports as hospitals are required by law to do. Bad doctors should not be allowed to practice.

Although our family will never recover from the loss of someone so precious to us, it is my hope that these changes will have prevented other families from experiencing the grief we are enduring.

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QUALITY HEALTHCARE IS A RIGHT

Ex "B"

2005 Amendment 52-190a

THE CHAIR:

Will you remark further? Senator Gunther.

SEN. GUNTHER:

Mr. President, I rise to oppose the bill. I'll say this. It's a big disappointment to me. We've had two sessions where we worked on the malpractice in this Legislature.

Last year, it was quite extensive. We had three different Committees, all three did do some consideration, put things together, had special meetings of the three Committees and members of that three Committees.

But the big disappointment is this year, we get this laid on our deck by a group that sat down and took three bills that were considered by three Committees, and they compromised the whole report of the three Committees to come up with what we have here.

And I won't say it's without some good things that they have tried to do. On the other hand, there is an awful lot that doesn't, hasn't been included. In fact, I don't even know if they were ever considered in the discussions on this particular bill.

I think that when I hear the report on the Judiciary, and my good leader, Mr. McDonald, that it really sounds very, very familiar to me that this considers to be a very, very new thing.

But in listening to his report, I think they've done 99% of it is to justify what has been the practice over the years that I've been sitting up here and listening to the dialogue on malpractice.

And that is, you know, we passed a bill that said, gave a whole formula on how much a lawyer could charge when he handled these cases. It was a pro rata thing. It was, you know, high in the lower levels of settlement, and lower as you went down the line, and that type of thing.

✓ But lo and behold, two years ago, when we had a hearing, I brought the fact out that the judges had ruled that that was unconstitutional. You can't do that with lawyers. You can't tell a lawyer how much he can take on a case. Even though you had a state law, he says, it's unconstitutional.

What amazes me, Mr. President, I don't think that there's another profession in the State of Connecticut, in either medicine or anything else you can think of, that prohibits us from passing laws that say how much these people can get.

May not be on the percentage in that, but doctors, we have the HMOs, we have Medicare, we have Medicaid, sets out all the fees on exactly how much you can charge.

✓ But you can't do that in the legal profession because a judge rules it's unconstitutional.

Now, in this particular bill, all they've done is recited what's been the practice over years, that I can understand. I mean, I read it. I couldn't believe it, because all they are is justifying, all right.

Now, the lawyer can say, oh, we're only supposed to take a third of the fee here. But if you want me to handle this case, you better take and sign a waiver that tells me I can charge anything I damn well please.

And the nice part about that, they're really generous with that, because if the patient at that point decides he doesn't want him to represent him, all he has to do is say, oh, fine, I'll look for another lawyer. That's really a generous thing to put into the law.

As far as I'm concerned, there were things that we had talked about over the years we've been considering this, and I know in my bag of worms, for the malpractice, I'd say that I'm amazed that lawyers take a third of the economic settlement that comes in.

This means the person's actual cost to doctors, cost for his loss of time, cost for his braces, every dime